

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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## Court of Appeals, District of Columbia

JANUARY TERM, 1907.

No. 1765.

479

AMERICAN HOME LIFE INSURANCE COMPANY OF  
WASHINGTON, D. C., ROYAL LIFE INSURANCE  
COMPANY OF WASHINGTON, D. C., AND PROVI-  
DENT RELIEF ASSOCIATION OF WASHINGTON,  
D. C., APPELLANTS,

vs.

THOMAS E. DRAKE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED MARCH 6, 1907.

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# In the Court of Appeals of the District of Columbia.

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No. 1765.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON,  
D. C., Appellants,

*vs.*

THOMAS E. DRAKE.

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*a* In the Supreme Court of the District of Columbia.

Equity. No. 25802.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON,  
D. C., ROYAL LIFE INSURANCE COMPANY OF WASHINGTON, D. C.,  
PROVIDENT RELIEF ASSOCIATION OF WASHINGTON, D. C., Com-  
plainants,

*against*

THOMAS E. DRAKE, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:—

1

*Bill.*

Filed October 31, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 25802.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON,  
D. C., ROYAL LIFE INSURANCE COMPANY OF WASHINGTON, D. C.,  
PROVIDENT RELIEF ASSOCIATION OF WASHINGTON, D. C., Com-  
plainants,

*against*

THOMAS E. DRAKE, Defendant.

The complainants state as follows:

1. Each of the complainants is a body corporate under the laws of the District of Columbia, a citizen of the United States and a resi-

dent of the District of Columbia, and brings this suit in its own right; and the complainants unite in bringing this suit for the reason that they are interested in common in the question, and each of them, presented by this bill of complaint, and in order to avoid a multiplicity of suits as separate complainants.

2. The defendant is a citizen of the United States and a resident of the District of Columbia, and is sued as Superintendent of Insurance of the District of Columbia.

3. Each of the complainants was heretofore duly incorporated and organized under the laws of the District of Columbia as a body corporate for the purpose of transacting the business of life, sick benefit and accident insurance, and during several years last past has been, and now is, actually engaged in such business, issuing to its members policies or certificates, agreeing to pay benefits or sums of money to be realized by assessments levied upon its members, and not otherwise; and each of the complainants has been, and now is, so carrying on the said business directly and through agents in the District of Columbia, under its act of incorporation aforesaid and in manner aforesaid.

4. The moneys realized by the complainants, and each of them, from the said assessments are by them, and each of them, collected and applied exclusively for the purpose of paying benefits as aforesaid, except that a proportion thereof is levied and collected by the complainants, and each of them, to pay the expenses of carrying on their and its business, and accordingly, the nett amount of the said assessments to the complainants, and each of them, is far below the whole or gross amount thereof.

5. Although each of the complainants has, in accordance with the terms and provisions of its act of incorporation, a small capital stock, so-called, the capital derived to the complainants, and each of them, on account thereof, was derived and is held by the complainants, and each of them, for the purpose of providing and maintaining a fund to inaugurate and establish and secure the efficient operation and carrying on of its business, and is not used for the purpose of paying benefits as aforesaid, and is not liable for the payment of such benefits, except in the case of the emergency that the assessments aforesaid shall, at any time, fail to pay the said benefits, or any of them.

6. Section 656 of the Code of Laws for the District of Columbia, relating to the Superintendent of Insurance of the said District, provides as follows:—

“It shall be the duty of said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, live-stock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said Superintendent a copy of its charter, decla-

ration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officer of the state, territory or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein; and if its principal office is located outside the District it shall appoint some suitable person, resident in said district, as its attorney, upon whom legal process may be served; and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four and six hundred and fifty-five of this sub-chapter. Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District."

7. Section 647 of the said Code provides as follows:

4 The said superintendent shall furnish, in December of each year, to every company or association hereinbefore mentioned, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president, or vice-president, and secretary, or assistant secretary, or if a foreign company by its manager or proper representative within the United States, showing its true financial condition as of the next preceding thirty first day of December which shall include a classified statement of its assets and liabilities on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one newspaper published in the District of Columbia in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked."

8. Section 648 of the said Code provides as follows:

"No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress, or the general laws of said District, or mutual companies of other states licensed to do business in the said District, which has a paid up capital of less than one hundred thousand dollars shall be permitted to do business therein, and all life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be

the duty of the superintendent of insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty dollars for each day it transacts business without such license, to be recovered by the Commissioners of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid

in carrying on the business of any such company, or shall  
 5 act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the police court of said District shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section six hundred and forty-six of this subchapter, subject, however, to the provisions of sections six hundred and fifty-four and six hundred and fifty-five thereof: *Provided*, That the superintendent of insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid."

9. Section 650 of the said Code provides as follows:—

"Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to one and one-half per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections six hundred and fifty four and six hundred and fifty five; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against said company, which, together with said taxes, shall be collected before said company shall be allowed to resume business."

6 10. Section 652 of the said Code provides as follows:—



"It shall be the duty of the said superintendent of insurance to ascertain whether the capital required by law or the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charters, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter, and the president and secretary of such company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent *bona fide* the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties now prescribed by law in the District of Columbia for that crime."

11. Section 653 of the said Code provides as follows:

"Insurance companies or associations transacting the business of life insurance on the assessment plan, organized under the laws of the District of Columbia or of any State of the United States, and doing business in said District, shall not be required to comply with the provisions of the next preceding section in regard to its assets; but such assessment companies or associations shall be required, as a condition of license to do business in said District, to file annually in the month of January with said superintendent a sworn statement setting forth that they are paying, and for the twelve months next preceding have paid, the maximum amount named in their policies or certificates of membership when and as the same become due and payable, and that one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued, and such other information as he may require. Such assessment companies or associations shall also furnish said superintendent evidence that they hold an emergency or surplus fund as a guaranty for the payment of future death claims when the same is required by the charter or constitution of the company or association; and any such company or association licensed to do an insurance business refusing or neglecting to furnish such certificate shall  
7 have its license to do business in the District of Columbia revoked, but the provisions of this section shall apply only to associations transacting life insurance upon the assessment plan."

12. The complainants are advised and believe, and therefore aver, that of the said Sections of the said Code only Section 653 is applicable to them, and each of them, and they allege as matter of fact that each and every of them has complied with all the requirements of the said Section, and that the defendant has admitted to each of the complainants in writing that it has complied with the provisions of the said Section respecting the sworn statement therein mentioned and provided to be filed annually in the month of January of the current year.

13. Nevertheless, the defendant has demanded of the complainants, and each of them, compliance with the provisions of said Sections 647 and 650, and each of them, under penalty, in case of failure of such compliance, that action against them, and each of them, and their and each of their agents, will be taken under the said Section 648.

14. If the said threatened action of the defendant shall be taken against the complainants, it will subject them, and each of them, to numerous and constantly recurring actions of debt, thereby involving the complainants, and each of them, in a multiplicity of suits in that behalf, and will, moreover, profess and undertake to deprive them of the license and right to carry on business in the District of Columbia under and in conformity with their respective acts of incorporation, and each of them, and thereby inflict upon  
8 the complainants, and each of them, irreparable injury, putting them to great and irremediable disadvantage in competition with rival corporations of a similar kind, and causing them great financial damage incapable of compensation in money, and likewise causing them to engage in a further great multiplicity of suits in endeavoring to defend and protect themselves against the consequences of the pretended forfeiture and denial of their right to carry on their business as aforesaid.

The premises considered, the complainants, and each of them, therefore pray as follows:

First. That process may issue to the defendant, requiring him to appear to and answer the exigency of this bill of complaint.

Secondly. That the defendant may, both during the pendency of this cause and on the final hearing thereof, be restrained and enjoined from taking the action threatened by him, or any action against the complainants, or any one of them, under the said Section 648, or any provisions thereof.

Thirdly. That the defendant may similarly be restrained and enjoined from undertaking, attempting or professing to forfeit or deny to the complainants, or any one of them, the right or license to continue doing business in the District of Columbia, as aforesaid; and

Fourthly. That the complainants, and each of them, may have such other and further relief in the premises as the nature  
9 of the case may require.

The defendant to this bill of complaint is Thomas E. Drake, Superintendent of Insurance of the District of Columbia.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON, D. C.,

[SEAL.] By GILBERT W. CAVE, *Its Treasurer.*

ROYAL LIFE INSURANCE COMPANY OF WASHINGTON, D. C.,

[SEAL.] By FRANK T. EVANS, *Its Treasurer.*

PROVIDENT RELIEF ASSOCIATION OF WASHINGTON, D. C.,

[SEAL.] By TIMOTHY BROSNAN, *Its Treasurer.*

HENRY E. DAVIS,  
*Solicitor for Complainants.*

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Gilbert W. Cave, Frank T. Evans and Timothy Brosnan, who, and each of whom, being by me first duly sworn, severally depose and say that they are, respectively, the treasurers of the above-named American Home Life Insurance Company of Washington, D. C., Royal Life Insurance Company of Washington, D. C., and Provident Relief Association, of Washington, D. C.; that they have heard read the foregoing bill by them subscribed and know the contents thereof and that the statements therein made of their own knowledge are true and that those made on information and belief they believe to be true.

GILBERT W. CAVE.

FRANK T. EVANS.

TIMOTHY BROSANAN.

Subscribed and sworn to before me this 31st day of October, A. D., 1905.

[SEAL.]

EDWARD B. KIMBALL,  
*Notary Public, D. C.*

*Demurrer.*

Filed March 14, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25802.

AMERICAN HOME LIFE INSURANCE COMPANY ET AL.

*vs.*

THOMAS E. DRAKE.

Now comes the defendant, by his attorney, and demurs to the Bill herein filed, and for cause of demurrer says that the said Bill is lacking in that equity which entitles complainants to relief in a court of equity.

E. H. THOMAS,  
F. H. STEPHENS,  
*Sol'rs for Def.*

DISTRICT OF COLUMBIA, ss:

I, Thomas E. Drake, upon oath say that I am the defendant in the above-entitled cause, and that the demurrer herein filed by me to the bill of complaint is not interposed for delay.

THOMAS E. DRAKE.

Subscribed and sworn to before me this 13th day of March, A. D. 1906.

JAMES F. SMITH,  
*Notary Public, D. C.*

I hereby certify that the foregoing demurrer is well-founded in law.

F. H. STEPHENS,  
*Solicitor for Defendant.*

12

*Decree.*

· Filed March 22, 1906.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 25802, Doc. 57.

AMERICAN HOME LIFE INSURANCE COMPANY and ROYAL LIFE IN-  
SURANCE COMPANY

*vs.*

THOMAS E. DRAKE.

This cause coming on to be heard on demurrer to the Bill, was argued by counsel for the respective parties and considered by the Court, thereupon it is, by the Court, this 22d day of March, A. D. 1906, adjudged, ordered and decreed that the said demurrer be and the same is hereby sustained, and the complainants having elected in open court to stand upon the said demurrer and having declined to amend their Bill, it is further adjudged, ordered and decreed that the said Bill be, and the same is hereby, finally dismissed, with costs to be taxed by the Clerk and that the defendant have execution therefor as at law.

By the Court:

WENDELL P. STAFFORD, *Justice.*

13

*Appeal to Court of Appeals and Penalty of Bond Fixed.*

Filed March 22, 1906.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 25802, Doc. 57.

AMERICAN HOME LIFE INSURANCE COMPANY and ROYAL LIFE IN-  
SURANCE COMPANY

*vs.*

THOMAS E. DRAKE.

The complainants, in open Court, pray an appeal to the Court of Appeals from the decree entered in this cause sustaining the defendant's demurrer, and the court fixes the sum of the bond for costs to be one hundred dollars on such appeal.

Done this 22d day of March, 1906.

By the Court:

WENDELL P. STAFFORD, *Justice.*

*Memorandum.*

April 11, 1906.—Appeal Bond, filed.

14      *Directions to Clerk for Preparation of Transcript of Record.*

Filed April 10, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 25802.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON,  
D. C., and Others, Complainants,  
*against*  
THOMAS E. DRAKE, Defendant.

To the Clerk:

I hereby designate the following portions of the record in the above entitled cause to be transcribed as and for the record on the appeal therein taken:

1. Bill of Complaint;
2. Demurrer;
3. Decree;
4. Memorandum of bond.

HENRY E. DAVIS,  
*Solicitor for Complainants.*

Edward H. Thomas, Esquire, Solicitor for Defendant.

SIR: Please take notice that I will this day file the foregoing designation for the transcript of record on the appeal in the above entitled cause.

HENRY E. DAVIS,  
*Solicitors for Complainants.*

Service of notice and copy of the foregoing acknowledged this 10th day of April, A. D. 1906.

E. H. THOMAS,  
Per F. H. S.,  
*Solicitor for Defendant.*

4/10/06.

15      Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record,  
2—1765A

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 25802, in equity, wherein American Home Life Insurance Company, of Washington, D. C., *et al.*, are Complainants, and Thomas E. Drake, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 5th day of March, A. D., 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No 1765. American Home Life Insurance Company of Washington, D. C., appellants, vs. Thomas E. Drake. Court of Appeals, District of Columbia. Filed Mar. 6, 1907. Henry W. Hodges, clerk.



